

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 6, 2008 Session

MARY HENDON ATKINS v. GREGORY JOHN MOTYCKA

Appeal from the Circuit Court for Davidson County
No. 06D-85 Muriel Robinson, Judge

No. M2007-02260-COA-R3-CV - Filed November 6, 2008

In this divorce action, the husband appeals the trial court's award of alimony *in solido*, an upward deviation in child support, and the issuance of a permanent injunction against his mistress. The trial court awarded the wife alimony *in solido* in the amount of \$360,000, which was satisfied with an assignment of the husband's equity in the marital residence. The trial court made an upward deviation in child support, requiring the husband to pay more than twice the presumptive amount. The trial court also made the husband's mistress an involuntary third party and issued a permanent injunction prohibiting her from having any contact with the wife or the parties' children. The husband contends the assignment of his equity in the marital residence as alimony *in solido* constituted an inequitable distribution in the marital property, the upward deviation in child support is not justified, and the trial court lacked jurisdiction to issue an injunction against his mistress. We affirm the award of alimony *in solido*. We reverse the upward deviation in child support because the record fails to establish specific facts that justify a deviation from the presumptive amount of child support. We vacate the permanent injunction issued against the husband's mistress because the injunction is void due to the fact the trial court did not have jurisdiction over her.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part,
Vacated in Part, and Reversed in Part**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT, J., joined. PATRICIA J. COTTRELL, P.J., M.S., not participating.

Marlene Eskind Moses and John D. Kitch, Nashville, Tennessee, for the appellant, Gregory John Motycka.

D. Scott Parsley and Michael K. Parsley, Nashville, Tennessee, for the appellee, Mary Hendon Atkins.

OPINION

Mary Hendon Atkins filed for divorce from Gregory John Motycka on January 10, 2006, on the grounds of irreconcilable differences, inappropriate marital conduct, and adultery. The parties had been married since August 5, 1990, and have two children, twins, born on February 3, 1995.

Both parties are highly educated and they lived a lavish lifestyle during their marriage, notwithstanding the fact that neither of them earned a significant income. Ms. Atkins had a masters degree in social work, however, she only worked part-time during the marriage as a marriage counselor. She spent most of her time working in the home as a stay-at-home mother. Mr. Motycka had a bachelor's degree in music, however, he seldom worked. Over the course of the marriage, he earned less than \$300 per month on average. The parties' lavish lifestyle was made possible by the generosity of Mr. Motycka's ancestors. He was the beneficiary of spendthrift trusts and he additionally received frequent and generous monetary gifts from his mother. Although the parties lived a very comfortable lifestyle as a consequence of gifts and trust distributions to Mr. Motycka, they did not acquire or retain any assets of significant value with the exception of the marital residence, which had equity of approximately \$720,000 at the time of the divorce.

After eleven years of marriage, Mr. Motycka met his future mistress, Jennifer McGail Pitts. They soon began an affair, notwithstanding the fact that both were married. Their affair continued without incident for approximately four years until Mrs. Pitts' husband learned of the affair. Realizing that her marriage was in jeopardy, Mrs. Pitts insisted that Mr. Motycka immediately proceed to obtain a divorce from Ms. Atkins, as he had promised Mrs. Pitts, so that he could marry her. When that did not occur, Mrs. Pitts engaged in irrational behavior, which included calling Ms. Atkins up to forty times a day and threatening to go to the children's school to tell them of their father's affair. Mrs. Pitts also followed Mr. Motycka to work one day and hit him in the presence of others.

Despite Mrs. Pitts' behavior, the affair with Mr. Motycka continued. Moreover, Mr. Motycka continued to provide financial support for Mrs. Pitts, which included paying for her cell phone service, her children's cell phones, as well as her utilities and beauty salon expenses. Mr. Motycka also provided gifts for Mrs. Pitts' children, including a motorcycle for her son and a motor scooter for her daughter.

The case went to trial in August of 2007. Mr. Motycka and Ms. Atkins testified and Mrs. Pitts, who was not a party to the action, also testified. Immediately following Mrs. Pitts' testimony, the trial court *sua sponte* instructed Ms. Atkins' attorney to prepare an order making Mrs. Pitts a third-party defendant to the divorce action and permanently enjoining Mrs. Pitts from having any contact with Ms. Atkins.

In the Final Decree of Divorce, Ms. Atkins was granted a divorce on the grounds of Mr. Motycka's inappropriate marital conduct and adultery. The only marital asset of any value was the marital residence, the equity of which, approximately \$720,000, the trial court divided equally. The

trial court determined that Ms. Atkins was the economically disadvantaged spouse and awarded her alimony *in solido* in the amount of \$360,000. The trial court determined the award of alimony *in solido* should be paid in one lump sum. To accomplish this, the court assigned Mr. Motycka's half interest in the equity in the marital residence to Ms. Atkins. In addition to alimony *in solido*, Ms. Atkins was awarded transitional alimony of \$1,500 per month for a period of three years.¹ As for child support, the trial court determined the presumptive amount pursuant to the Child Support Guidelines was \$1,153 per month; however, the court determined that an upward deviation to \$2,500 per month was necessary to maintain the children's lifestyle and to pay their summer camp fees. In the Final Decree of Divorce, the trial court permanently enjoined Mrs. Pitts "from contacting, threatening, harassing, verbally abusing or coming into the presence of [Ms. Atkins] or the minor children . . . at any place or any time whatsoever." This appeal by Mr. Motycka followed.

Mr. Motycka asserts that the trial court erred in (1) setting the amount of alimony *in solido*; (2) issuing injunctive relief against his mistress, Mrs. Pitts; and (3) setting child support based upon an upward deviation.

ANALYSIS

I.

Mr. Motycka contends the \$360,000 lump sum award of alimony *in solido*, which was satisfied by assigning Mr. Motycka's equity in the marital residence to Ms. Atkins, constitutes an inequitable division of the marital estate.² His contention is premised on the erroneous assertion that Ms. Atkins was awarded marital property in the net amount of \$752,217.40 and that he was awarded a net value of only \$75,053.23. Contrary to Mr. Motycka's assertions, after deducting the assignment of the parties' marital obligations to the respective spouses, Ms. Atkins was awarded a net value of \$387,891.40, inclusive of her share of the equity in the marital residence, and Mr. Motycka was awarded a net value of \$289,272.77,³ inclusive of his share of the equity in the marital residence.

The purpose of alimony is to assist the disadvantaged spouse to become or remain self-sufficient. *Shackleford v. Shackleford*, 611 S.W.2d 598, 601 (Tenn. Ct. App.1980). When economic rehabilitation is not feasible, alimony may be awarded to mitigate the harsh economic realities of divorce. *Id.* Although divorced couples often lack sufficient assets or income to enable both of them to retain their pre-divorce standard of living, *Brown v. Brown*, 913 S.W.2d 163, 169-70

¹The court also ordered Mr. Motycka to pay Ms. Atkins's attorney's fees of \$56,191.45.

²Mr. Motycka includes in his alimony argument the debt on Ms. Atkins's automobile that Mr. Motycka was ordered to pay; however, he also acknowledges in another section of his brief, that his obligation to pay the debt on the automobile does not constitute alimony. Accordingly, we have not included that debt in our discussion of alimony *in solido*.

³Mr. Motycka was required to pay several of the marital debts, which reduced the net value of his share of the marital property to less than his share of the equity in the marital residence.

(Tenn. Ct. App. 1994), the economically advantaged spouse may be required to provide “closing in money” to assist the disadvantaged spouse in approaching his or her former financial condition. *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995).

Tennessee recognizes four separate classifications of spousal support, alimony *in futuro*, alimony *in solido*, rehabilitative alimony, and transitional alimony. Tenn. Code Ann. § 36-5-121(d)(1) (2005). Depending on the circumstances of the case, the court may award one form of alimony or a combination of the separate classifications of alimony. Tenn. Code Ann. § 36-5-121(d)(1). Alimony *in solido* is a form of long term support, Tenn. Code Ann. 36-5-121(h)(1), that consists of a definite sum of money. *Broadbent v. Broadbent*, 211 S.W.3d 216, 222 (Tenn. 2006); *Burlew v. Burlew*, 40 S.W.3d 465, 471 (Tenn. 2001). Alimony *in solido* may be awarded in a lump sum at the time of the final decree, or it may be awarded in the form of periodic payments for a given period of time. *Broadbent*, 211 S.W.3d at 222; *Waddey v. Waddey*, 6 S.W.3d 230, 232 (Tenn. 1999).

There are no hard and fast rules for alimony decisions. *Manis v. Manis*, 49 S.W.3d 295, 304 (Tenn. Ct. App. 2001); *Anderton v. Anderton*, 988 S.W.2d 675, 682 (Tenn. Ct. App. 1998); *Crain v. Crain*, 925 S.W.2d 232, 233 (Tenn. Ct. App. 1996). Alimony decisions require a careful consideration of the relevant factors in Tenn. Code Ann. § 36-5-121(i) and typically hinge on the unique facts and circumstances of the case. *Oakes v. Oakes*, 235 S.W.3d 152, 160 (Tenn. Ct. App. 2007); *Anderton*, 988 S.W.2d at 683; *Crain*, 925 S.W.2d at 233. Of the relevant factors to be considered when determining whether to award alimony, which are stated with specificity in Tenn. Code Ann. § 36-5-121(i), the two most important factors to be considered are the need of the economically disadvantaged spouse and the obligor spouse’s ability to pay. *Riggs v. Riggs*, 250 S.W.3d 453, 457 (Tenn. Ct. App. 2007) (citing *Robertson v. Robertson*, 76 S.W.3d 337, 342 (Tenn. 2002); *Bogan v. Bogan*, 60 S.W.3d 721, 730 (Tenn. 2001); *Sullivan v. Sullivan*, 107 S.W.3d 507, 510 (Tenn. Ct. App. 2002)). When considering these two factors, the primary consideration is the disadvantaged spouse’s need. *Id.* (citing *Aaron*, 909 S.W.2d at 410; *Watters v. Watters*, 22 S.W.3d 817, 821 (Tenn. Ct. App. 1999)).

Trial courts have broad discretion to determine whether spousal support is needed and, if so, the nature, amount, and duration of support. *Bratton v. Bratton*, 136 S.W.3d 595, 605 (Tenn. 2004); *Burlew*, 40 S.W.3d at 470; *Garfinkel v. Garfinkel*, 945 S.W.2d 744, 748 (Tenn. Ct. App. 1996). Appellate courts should not second-guess a trial court’s spousal support decision unless the decision is not supported by the evidence or is contrary to the public policies reflected in the applicable statutes. *Nelson v. Nelson*, 106 S.W.3d 20, 23 (Tenn. Ct. App. 2002); *Brown v. Brown*, 913 S.W.2d 163, 169 (Tenn. Ct. App. 1994). It is not the role of the appellate court to fine tune a trial court’s spousal support award. *Fox v. Fox*, No. M2004-02616-COA-R3-CV, 2006 WL 2535407, at *9 (Tenn. Ct. App. Sept. 1, 2006) (no Tenn. R. App. P. 11 application filed); *Hartman v. Hartman*, No. E2000-1927-COA-R3-CV, 2001 WL 823188, at *7 (Tenn. Ct. App. July 20, 2001). To the contrary, it is our role to determine whether the trial court applied the correct legal standard and reached a decision that is not unreasonable. *Bogan*, 60 S.W.3d at 733.

The record reveals that the trial court considered the issue of alimony separate and apart from the classification and equitable division of the marital property. The record also reveals that the trial court conducted an in-depth analysis of the relevant alimony factors, which are set forth in Tenn. Code Ann. § 36-5-121(i), including the duration of the marriage, the relative earning capacity, obligations, needs, and financial resources of each party, the relative education and training of each party, the separate assets of each party, the provisions made with regard to the marital property, the standard of living established during the marriage, the extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and the relative fault of the parties. This is evident from the trial court's Memorandum Opinion, which sets out specific findings as to the relevant factors. The two more relevant specific findings by the trial court are that Mr. Motycka "has the funds available to him to pay for or purchase those things exactly which he wants and he has established a lifestyle for his family he can continue, being able to access the funds from his trust account," and that "[Mr. Motycka's] conduct has been outrageous and the wife has been much aggrieved by his wrong doings, which has caused the family distress and ultimately destroyed the marriage and family unit." Based upon its analysis and findings, the trial court correctly determined that Ms. Atkins was the economically disadvantaged spouse, that she needed long term support in the form of alimony *in solido*, and that Mr. Motycka was able to provide financial assistance to her.

Once the trial court determined that Ms. Atkins was the economically disadvantaged spouse and that she needed long term support in the form of alimony *in solido*, the next determination was the amount of alimony and whether it should be paid in a lump sum or periodically. The court set the award of alimony at \$360,000. Without factoring in the present value of the award, an award of \$360,000 equates to an award of \$3,000 per month for ten years. Realizing Mr. Motycka's life long aversion to gainful employment, the trial court realized that a lump sum payment was appropriate.

A similar decision was made based on the husband's history of irresponsibility in *Caldwell v. Caldwell*, No. M2007-01205-COA-R3-CV, 2008 WL 4613586 (Tenn. Ct. App. Oct. 13, 2008) (no Tenn. R.. App. P. 11 application filed). After determining that the trial court had correctly determined the amount of the award of alimony *in solido*, this court turned its attention to the husband's complaint on appeal that the trial court had abused its discretion by assigning the husband's marital interest in the retirement account to the wife to satisfy his alimony obligation. *Id.* at *7. This court determined, under the unique facts and circumstances of that case, that the trial court ruled appropriately "[i]n light of Husband's irresponsibility" and other factors that adversely impacted his reliability to make future payments. Accordingly, we affirmed the trial court's decree of the husband's marital interest in the retirement account to the wife as alimony *in solido*. *Id.*

The trial court applied the correct legal standard when considering the award of alimony *in solido*. The record also reveals the trial court recognized Mr. Motycka's aversion to gainful employment. As was the case in *Caldwell*, considering the unique facts of this case, we affirm the trial court's decision to make a lump sum award of alimony *in solido* in the amount of \$360,000, and to fund that award by assigning Mr. Motycka's equity in the marital residence to Ms. Atkins. We, therefore, affirm the award of alimony *in solido*.

II.

For his second issue, Mr. Motycka contends the trial court erred in issuing injunctive relief against Mrs. Pitts. Before we consider the issue as raised, we must first determine whether Mr. Motycka has standing to challenge the validity of an injunction against Mrs. Pitts, who is not a party to this appeal.

STANDING TO CHALLENGE THE INJUNCTION AGAINST MRS. PITTS

The record indicates that Mr. Motycka intended to marry Mrs. Pitts; however, the permanent injunction would prohibit Mrs. Pitts from being in the presence of Mr. Motycka's children. Therefore, the permanent injunction would significantly affect Mr. Motycka's legal right and ability to maintain a relationship with his children after he marries Mrs. Pitts. Such a circumstance affects Mr. Motycka's constitutional right to privacy. *See Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993).

Unless "substantial harm threatens a child's welfare, the state lacks a sufficiently compelling justification for the infringement on the fundamental right of parents to raise their children as they see fit." *Hawk*, 855 S.W.2d at 577. In cases of divorce, it is very important to maintain the relationship between the non-custodial natural parent and the child, *Neely v. Neely*, 737 S.W.2d 539, 542 (Tenn. Ct. App. 1987) (citing *Dillow v. Dillow*, 575 S.W.2d 289, 291 (Tenn. Ct. App. 1978)), and "[t]he courts should not lightly and without good cause sever the non-custodial parent's right to the care and companionship of a child." *Neely*, 737 S.W.2d at 542 (citing *Stubblefield v. State ex rel. Fjelstad*, 106 S.W.2d 558, 560 (Tenn. 1937)). Because the restraint imposed by the permanent injunction would likely interfere with Mr. Motycka's right to maintain a relationship with his children, Mr. Motycka has standing to challenge the validity of the injunction issued in this action.

WHETHER THE TRIAL COURT HAD JURISDICTION OVER MRS. PITTS

The trial court *sua sponte* issued an order making a non-party, Mrs. Pitts, a third party defendant to the divorce action between Mr. Motycka and Ms. Atkins. The court has the authority to add a party "at any stage of the action and on such terms as are just." Tenn. R. Civ. P. 21. However, the court must have jurisdiction, meaning personal jurisdiction, over the non-party to be added as a party in order to adjudicate a controversy involving the non-party. *See Haley v. Univ. of Tennessee-Knoxville*, 188 S.W.3d 518, 522 (Tenn. 2006) (citing *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977)). "Proper notice is a necessary prerequisite for the exercise of personal jurisdiction over a defendant." *Lewis v. Bowen*, No. M2003-00985-COA-R3-CV, 2004 WL 2752811, at *4 (Tenn. Ct. App. Dec. 1, 2004) (citing *Dixie Savings Stores, Inc. v. Turner*, 767 S.W.2d 408, 410 (Tenn. Ct. App. 1988)). Personal jurisdiction over a party is generally obtained by service of process in conformance with Tenn. R. Civ. P. 4. "The general rule is that notice by service of process or in some other manner provided by law is essential to give the court jurisdiction of the parties; and judgment rendered without such jurisdiction is void and subject to attack from any angle." *Johnson v. McKinney*, 222 S.W.2d 879, 883 (Tenn. Ct. App. 1948).

Mrs. Pitts was not a party to this action prior to the trial court's *sua sponte* order. She was present in the courtroom merely because she was called as a witness. She has not been served with process and she has not consented to being added as a party. As a consequence, the trial court lacked jurisdiction to issue an injunction against Mrs. Pitts. Therefore, the permanent injunction against Mrs. Pitts must be vacated.

III.

For his final issue, Mr. Motycka contends the trial court erred in awarding an upward deviation in Mr. Motycka's monthly child support obligation. The presumptive child support was \$1,153 per month. The trial court deviated from the Guidelines by increasing the award by \$1,347, more than doubling Mr. Motycka's child support from \$1,153 to \$2,500.

"Parents have 'deeply rooted moral responsibilities' to support their minor children," *Richardson v. Spanos*, 189 S.W.3d 720, 724 (Tenn. Ct. App. 2005) (citing *Boggs v. Boggs*, 520 U.S. 833, 847 (1997)), and Tennessee imposes a legal obligation on parents to support their minor children in a manner commensurate with their own means and station in life. *Id.* (citing Tenn. Code Ann. § 34-1-102(a) (2001); *Wade v. Wade*, 115 S.W.3d 917, 920 (Tenn. Ct. App. 2002)).

The process and criteria for determining a parent's child support obligation is governed by Child Support Guidelines promulgated by the Tennessee Department of Human Services in accordance with Tenn. Code Ann. § 36-5-101(e). The amount of support derived from a proper application of the formula in the Child Support Guidelines becomes the presumptive amount of child support owed. *Richardson*, 189 S.W.3d at 725. The presumptive amount of support, however, is rebuttable, Tenn. Code Ann. § 36-5-101(e)(1)(A); Tenn. Comp. R. & Regs. 1240-2-4-.01(1)(d)(1) (2008); *Taylor v. Fezell*, 158 S.W.3d 352, 357 (Tenn. 2005), and a trial court may, in its discretion, deviate from the amount of support required by the Child Support Guidelines. *State v. Wilson*, 132 S.W.3d 340, 343 (Tenn. 2004); *Jones v. Jones*, 930 S.W.2d 541, 544 (Tenn. 1996). When a trial court deviates from the guidelines, the court is required to specifically state in written findings why the application of the Child Support Guidelines would be unjust or inappropriate in the case. Tenn. Code Ann. § 36-5-101(e)(1)(A); Tenn. Comp. R. & Regs. 1240-2-4-.07(1)(b) (2008). Although the trial courts retain an element of discretion to deviate from the presumptive amounts, such discretionary decisions must take into consideration the applicable law and the relevant facts. *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996).

As an appellate court, we review these discretionary decisions pursuant to a review-constraining standard of review. *Richardson*, 189 S.W.3d at 725 (citing *State ex rel. Jones v. Looper*, 86 S.W.3d 189, 193 (Tenn. Ct. App. 2000); *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 222-23 (Tenn. Ct. App. 1999)). Pursuant to this constraining standard of review, we do not have the latitude to substitute our discretion for that of the trial court. *Id.* (citing *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003); *State ex rel. Vaughn v. Kaatrude*, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000)). To the contrary, a trial court's discretionary decision to deviate from the Guidelines will be upheld as long as the trial court applied a correct legal standard, *Perry v. Perry*, 114 S.W.3d 465, 467

(Tenn. 2003), the decision is not clearly unreasonable, *Bogan*, 60 S.W.3d at 733, and reasonable minds can disagree about its correctness. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

If the trial court elects to deviate from the presumptive amount of child support mandated by the Guidelines, the trial court is under an affirmative duty to state with specificity in writing, *inter alia*, why the presumptive amount would be unjust or inappropriate.⁴ Tenn. Comp. R. & Regs. 1240-2-4-.07(1). When setting an upward deviation in child support, the court is required to state with specificity why the presumptive amount would be unjust or inappropriate. Tenn. Code Ann. § 36-5-101(e)(1)(A); Tenn. Comp. R. & Regs. 1240-2-4-.07(1)(b).

In the present case, the trial court provided two reasons to support its conclusion that the Guidelines presumptive amount of \$1,153.00 per month “would be unjust and inappropriate and not in the best interest of the parties’ minor children.” The specific reasons stated were to “maintain the children’s lifestyle” and to aid in the payment of “the children’s camp fees.” Of the two reasons stated, the cost of the camp fees is a specific finding. The need to maintain a “lifestyle” is not. The children’s summer camp fees, however, may not be used to justify an upward deviation because Mr. Motycka was ordered to pay one-half of the camp fees in the Parenting Plan. Therefore, because Mr. Motycka was specifically obligated to pay half of the camp fees, these fees may not be considered as justification of an upward deviation.

We also note that in addition to the presumptive amount of child support and health insurance for the children, Mr. Motycka was ordered to pay all non-covered medical, dental, orthodontia and eye care expenses. The Guidelines provide that such expenses are typically the financial

⁴Tenn. Comp. R. & Regs. 1240-2-4-.07. DEVIATIONS FROM THE CHILD SUPPORT GUIDELINES.

(1) Consideration of the Child's Best Interests; Written Findings to Support the Deviation.

(a) The amounts of support established by these Guidelines are rebuttable.

(b) The tribunal may order as a deviation an amount of support different from the amount of the presumptive child support order if the deviation complies with the requirements of this paragraph (1) and with this chapter. The amount or method of such deviation is within the discretion of the tribunal provided, however, the tribunal must state in its order the basis for the deviation and the amount the child support order would have been without the deviation. In deviating from the Guidelines, primary consideration must be given to the best interest of the child for whom support under these Guidelines is being determined.

(c) When ordering a deviation from the presumptive amount of child support established by the Guidelines, the tribunal's order shall contain written findings of fact stating:

1. The reasons for the change or deviation from the presumptive amount of child support that would have been paid pursuant to the Guidelines; and

2. The amount of child support that would have been required under the Guidelines if the presumptive amount had not been rebutted; and

3. How, in its determination,

(i) Application of the Guidelines would be unjust or inappropriate in the particular case before the tribunal; and

(ii) The best interests of the child for whom support is being determined will be served by deviation from the presumptive guideline amount.

responsibility of both parents. *See* Tenn. Comp. R. & Regs. 1240-2-4-.04(8)(d). Considering the additional expenses Mr. Motycka was required to pay, and the fact the trial court made no other specific findings to justify an upward deviation, we find no justification for an upward deviation.

The issue of Mr. Motycka's child support obligation is remanded to the trial court for the entry of an order setting Mr. Motycka's child support obligation at the presumptive child support amount of \$1,153 per month.

IN CONCLUSION

For the reasons stated above, we affirm the award of alimony *in solido*, we vacate the permanent injunction against Mrs. Pitts, and we reverse the upward deviation of Mr. Motycka's child support obligation. We remand this matter to the trial court for the entry of orders consistent with this opinion and for such other matters as may properly come before the court. Costs associated with this appeal are assessed against Mr. Motycka and Ms. Atkins equally.

FRANK G. CLEMENT, JR., JUDGE